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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 878

R. D. DOUGLAS, JR.

Petitioner

v.

W. WILLARD WIRTZ, Secretary of Labor,
United States Department of Labor,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

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R. D. Douglas, Jr., Petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above entitled case on October 8, 1965.

OPINIONS BELOW

The opinion of the District Court, printed in Appendix B hereto, page 21, is reported in 232 F. Sup. 348. The opinion of the Circuit Court of Appeals, printed in Appendix B hereto, page 32, is reported in Fed 2nd.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 8, 1965. The jurisdiction of this Court is invoked under U.S.C. Section 1254(1).

QUESTION PRESENTED

The Labor-Management Reporting and Disclosure Act requires detailed reports by attorneys and consultants on certain kinds of labor relations activities, and exempts other kinds from the reporting requirements. The question here is whether an attorney or consultant who receives a fee from a reportable activity in any year, must disclose for public record, *all* of his labor relations clients and all of his labor fees for that year, even in the areas and types of services otherwise exempted by the statute.

STATUTE INVOLVED

The statutory provisions involved are Sections 203(b) and (c); 204; and 209(a) of the Labor-Management

Reporting and Disclosure Act; (29 U.S.C. 433(b) and (c); 434; and 439). The statutes are printed in Appendix A, page 16.

STATEMENT

The Petitioner, R. D. Douglas, Jr., is a practicing attorney in North Carolina, in good standing in the courts of his State and is a member of the Bar of the Fourth Circuit and of this Court. For many years he has specialized in labor relations, in election matters, collective bargaining, arbitrations, and in cases before the National Labor Relations Board and the Federal Courts.

On two occasions, once in 1960 and once in 1961, he spoke directly to assembled groups of employees of a client concerning legal questions involved in pending NLRB elections. On a third occasion, in 1960, when a corporate client was charged with an unfair labor practice, Douglas spoke to assembled employees to explain the accusations and the company's defense to them. On each occasion, he was introduced by the employer as his attorney.

Douglas did not initially file reports on these speeches, as he did not believe them to be reportable under the statute. Later, when agents of the Secretary of Labor demanded that he file reports on these activities, with threats of fine or imprisonment, he did file, although not admitting that the reports were required. He filed the 30-day "activity" reports on each speech, setting out the arrangement with his clients and the details thereof. At the same time, he filed the required "annual" reports for 1960 and 1961 on receipts and disbursements, disclosing the fees received each time in connection with the speeches. For the 1960 work he was paid in that year, but his report for 1961 showed that a small part

of his fee for the 1961 speech was not actually paid until early 1962.

Later, the Labor Department demanded that Douglas amend his annual reports to include the name and address of every client, and the amount of every receipt and disbursement from these clients, in the entire field of labor relations during 1960, 1961, and 1962. Douglas admitted that he had represented many other clients in labor matters during those years, but claimed that such relationships concerned giving advice, bargaining for clients in contract negotiations, and handling their labor affairs before the NLRB and the courts, all of which appear to be expressly exempt from reporting under Section 203 (c) of the Act. On the basis of such belief, he refused to disclose his clients and fees other than in the three speeches referred to.

The Bureau renewed its demands and insisted that his reports also cover, in the disbursement section, that part of his office rent, clerical salaries, stamps, utilities and similar expenses which might be allocated to his labor relations practice, since the other members of his law firm did not handle labor matters.

Douglas filed an action for a declaratory judgment under 28 U.S.C. 1337, before the District Court for the Middle District of North Carolina, asking the Court to interpret the statute. The Department of Labor filed a similar suit one day later, but because of the similarity of parties and issues, the Department's action was held in abeyance pending the final outcome of the first suit.

The case was heard on stipulated facts. The parties stipulated that for purposes of this action only, Douglas' three speeches in 1960 and 1961 were reportable as activities directly or indirectly intended to persuade employees as to

the manner of exercising their right to organize and bargain collectively. It was also stipulated that Douglas engaged in other labor relations activities during those years, consisting of giving advice, collective bargaining, arbitration, and representation before administrative tribunals and the courts. In this manner, the only issue before the Court was whether the attorney's receiving fees for three reportable activities denied him the exemptions of 203(c) and required that he report clients, receipts and disbursements from all these otherwise exempt areas.

The District Court, on briefs and oral argument, ruled that the Act exempted from the reporting requirements advice, arbitration, collective bargaining, and legal representation; and that Douglas' three activities in reportable areas (as stipulated) did not forfeit the exemption of his other labor law practice from reporting. This opinion is printed in Appendix B, page 21.

The Secretary of Labor appealed to the Court of Appeals for the Fourth District, and on briefs and oral argument the Court reversed the District Court and declared that the all-inclusive reports must be filed. Three justices heard the case; two of them joined in the opinion and one dissented. The Court of Appeals opinion is printed in Appendix B, page 32.

REASONS FOR GRANTING THE WRIT

1. *The decision of the Court below affects thousands of attorneys and consultants who practice in the field of labor relations.*

The question before this Court is a novel one, arising from a new Federal statute not yet interpreted by any Court of Appeals except the Fourth Circuit, and that with a two-

to-one decision. However, attorneys and labor consultants all over the United States are vitally affected by the statute and its single interpretation. The legislative history indicates that the purpose of the statute was to uncover and expose to public scrutiny certain undercover activities of consultants (some of them attorneys) who undermined both labor and management with secret deals and arrangements. As finally written, however, the reporting requirements affect labor practitioners who operate entirely in the open and in the most ethical manner. Certainly the action of the Petitioner, openly discussing legal matters with his clients' employees, was not improper nor unethical.

Much more drastic than the facts of this case is the second part of Section 203(b), which is also involved in the decision below. The initial reporting is required, not only by the attorney or consultant who talks to or has contact with employees, but by one who "supplies an employer with information concerning . . . a labor organization."

This means that an attorney who is consulted by a client with a labor problem, either in an election campaign, a strike, or in collective bargaining, and who tells his client something about the modus operandi of the union and what he may expect from the union leaders, must file reports on the circumstances and must disclose the identity of the client and the amount of the fee paid. No cases have yet reached the courts on this reporting aspect, but that is what the statute says. This is burden enough on the attorney, but under the decision of the Court below, the attorney must also report all of his clients and fees in the field of labor law for the entire year.

This is the only statute known to the Petitioner which provides criminal penalties—one year in prison or ten thou-

sand dollars fine or both—if an attorney fails to disclose to the general public his own activities, entirely legal, and the names and financial transactions with his clients who were not in any way connected with reportable actions.

The decision below makes attorneys and consultants unique among all other professions. A druggist who sells narcotics (not necessarily unlawful) on one occasion must report the sale, but he does not thereafter have to report every sale or prescription that year. A doctor may treat a bullet wound and be required to report it to police authorities, but this does not require him to report all his other patients. A lobbyist must report his lobbying, but he need not report all his other business. Yet, under the decision below, a labor practitioner who engages in a pursuasive activity once is suspect for the entire year.

2. *A decision by this Court will forestall a great mass of litigation.*

The question before this Court—whether one reportable act requires reporting other clients and actions—does not call for any decision as to what kind of activity is reportable in the first instance. Disputes may arise between labor practitioners and the Labor Department on hundreds of factual situations, but these are not now pending. Nevertheless, a decision by this Court on the secondary or overall reporting will have great effect on the amount of litigation as to what is reportable of itself.

If this Court should reverse the decision of the lower Court, and rule that reporting is confined to the 30-day activity reports and to the annual reports on receipts and disbursements of the actual reportable activities, then attorneys and consultants will generally not hesitate to file on

any borderline circumstances which may or may not be reportable under the statute. This is exactly what happened to the Petitioner, Douglas. He disagreed that his three speeches were reportable, but to avoid litigation, he reported them. If he had known that these reports would open the door to public knewledge of all his labor law practice, he would undoubtedly have litigated the reportability of the speeches themselves.

The issue is one of continuing importance to all attorneys and consultants in the field of labor relations, and will be uncertain until the matter is settled.

3. *The question which this Court is requested to review is of great importance to Federal administration of the law.*

It is to be noted that even the Labor Department's interpretation of the law requires that an attorney or consultant report only names of clients and receipts and disbursements for the year, aside from the actually reportable activities. When the District Court questioned the value of such minimum information, the Department's attorneys stated that the Department would use this information to make investigations to determine if the reporting attorney performed reportable activities for the named clients. This intention is also set out in the Secretary's brief filed with the District Court.

Plainly stated, this means that if any attorney, such as the Petitioner, talked directly to employees of a client; or under the second part of the statute, told a client facts about a particular union he had become acquainted with over the years, he would file a report on this circumstance. Thereafter, even if the one occasion was the only reportable matter in a whole year's labor practice, he must report names of all his other labor clients. Then, upon receipt of such names,

special agents of the Labor Department would investigate each client, interview him, and demand to know what the client and his attorney had discussed or what was the nature of the relationship, all in an effort to learn if the attorney had performed a reportable service for the client.

In the instant case, Douglas engaged in no reportable activity throughout 1962. But because he was paid a small part of a fee in that year, all his 1962 labor clients must be named and investigated.

If this intention becomes a reality under the decision of the lower Court, the staff of the Bureau of Labor-Management Reports will have to be greatly increased, and countless employers who are innocent of any reportable activity will be interviewed and subjected to extensive interrogation.

4. *The Court below has changed the clear meaning of the statute.*

The statute first states that any consultant who engages in reportable activities, either in persuasion or giving information, must file a report on the arrangement with the employer within 30 days. Each activity must have its separate report. Then the statute says that for any year in which he receives payment "as a result of such arrangement," the consultant must report his receipts and disbursements. This annual report covers all the separate activities. Then comes 203(c), which says that nothing in the section shall be construed to require any reports on giving advice, collective bargaining, arbitration, and representation before tribunals or courts.

The initial reading of the language of 203(b) and (c) seems to indicate clearly that the Congress was not interested in getting reports on the routine practice of labor law. In

fact, 203(c) was the result of concern expressed by the American Bar Association that the reporting requirements were too broad.

Section 203(b) provides that the 30-day report shall contain a detailed statement of the agreement entered into and what activities are to be performed. No further reports are due until the annual report relative to receipts and disbursements which supplements the first report by showing what was paid to the consultant or attorney, and what disbursements or expenses were paid by him. As the District Court said:

> "This construction of 203(b) harmonizes with the terms of 203(c) and adopts what appears to the Court to be the clear sense of the words of 203(c) that no report, 30-day or annual, is required with reference to the regular, open and recognized labor law practice of the nature described in 203(c)."

The activity report discloses the nature of what the consultant is employed to do. The annual report discloses fees and disbursements, the latter category uncovering any "pay-off" or under-the-table financing of the activity already reported.

The Court below, by carefully examining where the word "advice" appears in both subsections, has changed the entire meaning of the section, nullified the exemptions of 203(c), and expanded the annual report to cover non-reportable, lawyer-client relationships which have nothing to do with reportable activities. And even in these other matters, nothing is required beyond names, fees and disbursements; giving no information of value to anyone, that is, until the Department starts investigating each client.

5. *The effect of the decision below is to impose a drastic restraint on the legitimate practice of labor law.*

Throughout the history of this case the Labor Department has taken the position that no ethical, responsible consultants or attorneys will ever engage in the activities set out in 203(b); and that those persons who do become involved in such matters deserve to have every act spread upon the public record. The Department seems unaware that the key words "persuasion" and "information" are susceptable of very broad interpretation, and that nearly every attorney or consultant who works closely with his client throughout a labor dispute, or even a minor problem, can hardly avoid some kind of indirect persuasion or supplying at least some information concerning the union. It is enough to be concerned about the necessity of filing single reports, without having to fear that the slightest venture into persuasion or information will necessitate reporting a whole year's law practice.

A simple example will explain. A month after the decision below, the Petitioner was asked by a client in Virginia to explain the State right-to-work law to employees who had been led to believe they must join the union to keep their jobs. This seemed to be a proper legal service, entirely lawful, but because the act might be reportable and thus require reports on every labor relations matter for the entire year, the Petitioner refused the client's request. Needless to say, the client could not understand. If the reporting were limited to the single act, the attorney would have performed the service and filed a report; it was the prospect of a year's reporting which made him refuse the client.

In the simple matter of advising a client, there is a problem. To most clients, retaining an attorney for advice is a

personal matter and what the client pays his attorney is also private. The client who finds his name and payments made a matter of public record simply because his attorney, months later, felt obliged to give another client information about a union, will not be kindly disposed toward his attorney. And so, the attorney must be ready to withhold from a good client legitimate legal services which might border on the area made reportable by 203 (b).

In the opinion below, Justice Bryan said:

"The requirement (reporting) is directed to labor consultants. Their work is not necessarily a lawyer's. Indeed, for a legal adviser it would be extra curricular."

This statement means that the attorney who feels that his duty to his client requires him to go a little further than sitting in his office and dispensing advice is somehow prostituting the profession.

Justice Bryan also says:

"Naturally, the conscientious lawyer may be troubled in the determination of whether or not a particular service comes within the statutory perscription 'to persuade employees to exercise or not to exercise' their rights. But this is not an uncommon problem. It is faced in many situations in which reports are required by law, e.g. whether receipts are reportable as taxable income."

Justice Bryan implies that the only problem is in the field of being what he calls elsewhere a "persuader." He has said nothing about the determination of whether "giving information to an employer" requires individual reporting and over-all reporting also. His example of an attorney's having to make a decision about reporting taxable income goes only halfway to the problem. If the income is taxable, it should

be reported; but reporting of the one taxable item does not require reports on all other non-taxable income.

The Petitioner wishes to reemphasize the importance of the decision below in the area of giving information to an employer. This portion of the statute was intended to uncover the activities of private detectives or others who might spy on union meetings or union leaders. Nevertheless, the statute as written applies to the attorney who furnishes information to an employer concerning union activities. This aspect of the statute did not arise in the Petitioner's case, but the requirement of the reporting of all labor practice, under the decision below, affects any attorney who might receive fees for advising his client, if the advice includes any such information.

6. There is at present no conflict of decisions in the Circuits. However, two cases are pending in the Fifth Circuit. One case, originating in Fort Worth, Texas, concerns the same issue as in Petitioner's case. The District Court ruled that annual reports must cover all the attorney's labor practice, and the attorney has appealed to the Court of Appeals. The other case comes from Tampa, Florida, and concerns both the question of annual reports and the question of whether minimum direct contact with a client's employees is reportable under 203(b). The District Court ruled that the facts were not reportable, and thereby did not reach the issue of full annual reports. This is being appealed by the Labor Department.

This Petitioner, in the past three months, has received many inquiries from outstanding attorneys over the country asking about the case. It appears that the statute has been very successful in stopping some of the clandestine, undercover relationships between consultant and employer or union which the Congress intended to expose. However, the Labor

Department is demanding more and more reports on activities of honest, ethical attorneys and consultants who are willing to file on individual matters possibly within 203(b) but are unwilling to make public everything they have done for a year.

All these circumstances make desirable an early ruling by this Court.

CONCLUSION

For the above reasons, the Petitioner respectfully renews his prayer that the Court review the decision of the Court of Appeals.

C. Kitchin Josey
Counsel for Petitioner

APPENDIX A

THE STATUTES INVOLVED

Sections 3(d) and 3(m) (29 U.S.C. 402(d) and m) provide:

"(d)" 'Person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers."

"(m) 'Labor relations consultant' means any person who, for compensation, advises or represents an employer, employer organization, or labor organizations concerning employee organizing, concerted activities, or collective bargaining activities."

Sections 203(b) and (c) (29 U.S.C. 433 (b) and (c)) provide:

"(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly—

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe."

"(c) Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder."

Section 204 (29 U.S.C. 434) provides:

"Nothing contained in this Act shall be construed to require an Attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this Act any information

which was lawfully communicated to such Attorney by any of his clients in the course of a legitimate attorney-client relationship."

Section 209 (a) (29 U.S.C. 439) provides:

"Any person who willfully violates this title shall be fined not more than $10,000.00 or imprisoned for not more than one year, or both."

"Any person who makes a false statement or representation of a material fact knowing it to be false, or who knowingly fails to disclose a material fact in any document, report or other information required under the provisions of this title shall be fined not more than $10,000.00 or imprisoned for not more than one year, or both."

APPENDIX B

JUDGMENT OF THE UNITED STATES DISTRICT COURT

This matter coming on to be heard before the Honorable Eugene A. Gordon, United States District Judge, at the July 20th, 1964 Term of Court;

And the parties having stipulated as to the facts and having submitted Briefs and Reply Briefs, and the Court having heard oral argument on behalf of both parties;

And it appearing to the Court that the issue raised by the stipulations and by the parties is whether a Labor Consultant, Attorney or otherwise, who is required under 29 U.S.C., Sec. 433(b) to file a report concerning certain activities enumerated thereunder, is exempt under 29 U.S.C. 433(c) from having to report on other labor law practice consisting of: (1) Giving or agreeing to give advice to the employer; (2) Representing or agreeing to represent the employer in Court or before administrative agencies or in an arbitration proceedings; (3) Engaging in or agreeing to engage in collective bargaining for the employer;

And the Court having considered the record as a whole, the legislative history of the Labor Management Reporting and Disclosure Act of 1959, and apparent abuses in the Labor Management field intended to be corrected;

And the Court, in a Memorandum Opinion, issued on the 5th day of August, 1964, having found that Section 433(c) exempts and does not require a report of any kind by a person with regard to advice and services performed of

the nature set out in 433 (c), even though such person in the same year performed activities reportable under Section 433 (b);

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

(1) That Sec. 433 (c) exempts and does not require a report of any kind by a person with regard to advice and services performed of the nature set out in 433 (c), even though in the same year such person performed activities set out in 433 (b).

(2) That the Plaintiff has complied with the Act insofar as the stipulated facts are concerned.

(3) That the interpretation by the Defendant of 29 U.S.C. 433 (c), that defendant's annual report should contain a statement of all receipts and disbursements of any kind on account of labor relations advice and services, including those relating to activities listed in 29 U.S.C. 433 (c), be and it hereby is declared erroneous.

(4) That the Defendant, Secretary of Labor, be and he is hereby ordered to accept the reports heretofore filed by the Plaintiff as complete and final as all reports that are required by the said Act for those years, insofar as the stipulated facts are concerned; and that the Defendant, and his Agents and officers be and they hereby are restrained from requiring the Plaintiff to file any reports in connection with his labor relations advice and services for the years 1960, 1961, and 1962, other than the reports already filed by him, insofar as the stipulated facts are concerned.

MEMORANDUM OPINION

This action seeks a declaratory judgment holding erroneous the Secretary of Labor's interpretation of the provisions of 29 U.S.C. § 433(b), § 433(c) and § 434 (§ 203(b), § 203(c) and § 204 of the Labor-Management Reporting and Disclosure Act of 1959). The plaintiff is a practicing attorney who specializes in Labor Law. Each party to the action has moved for summary judgment.

The specific provisions of said Act, which are in controversy, are as follows:

29 U.S.C. § 433:

> (b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly—
>
> (1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or
>
> (2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;
>
> shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its prin-

cipal office; and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or correspondent principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

(c) Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal or arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

The plaintiff announced at the time of the oral argument and in his brief that he was making no contention that the Secretary of Labor's interpretation of the Act violated and was contrary to the provisions of 29 U.S.C. § 434, and therefore these provisions of this section are not alluded to further in this opinion as there exists no contrary contentions thereto.

The question presented for decision is as follows: Must a person, attorney or otherwise, who is required to file the

annual report referred to in 29 U.S.C. § 433(b), include in the required report, a statement of receipts of any kind received from, and disbursements made on behalf of, *all employers* on account of labor relations advice or services, irrespective of whether the particular payments and disbursements were in connection with the activities referred to in 29 U.S.C. § 433(c)

Stated another way, the question is this: If a report is required of a person under 29 U.S.C. § 433(b) does 29 U.S.C. § 433(c) exempt such person from having to report on other labor law practice, consisting of: (1) Giving or agreeing to give advice to the employer; (2) Representing or agreeing to represent the employer in court or before administrative agencies or in an arbitration proceedings; (3) Engaging in or agreeing to engage in collective bargaining for the employer?

Under 29 U.S.C. § 402(d) a "person" is defined to include "One or more individuals" or "Legal representatives".

The stipulations of the parties establish that the relevant facts are not in dispute. Both sides have moved for summary judgment, and the court is of the opinion that the motion of the plaintiff for summary judgment should be allowed. Rule 52(a) Federal Rules of Civil Procedure provides that where summary judgment is granted, there is no need to make findings of fact. Therefore, the pertinent facts only are summarized herein in narrative form.

The plaintiff, an attorney, devotes the majority of his time to the practice of Labor Law. He represents employers in National Labor Relations Board elections, in collective bargaining, in unfair labor practice litigation, and before the Federal Courts. On three occasions, twice in 1960 and once

in 1961, the plaintiff spoke directly to assembled employees. It appears in the stipulations that, for the purpose of this decision, it is agreed that the three appearances were within the purview of 29 U.S.C. § 433(b) and reportable. The plaintiff did not initially, with regard to the three speeches, file the thirty day report required under 29 U.S.C. § 433(b) and contended that he was of the opinion that none of the speeches were of such nature as to require reporting under 29 U.S.C. § 433(b). The plaintiff did, after demand from the Secretary of Labor, file the reports setting out the arrangement with his client in each of the three cases. Also, he filed an annual report for 1960 and 1961, setting out only receipts and disbursements connected with the three speeches.

The Secretary of Labor demanded that the plaintiff amend his annual reports and show his receipts from all his Labor Law practice in 1960 and 1961, and also amend said reports to show any disbursements from such receipts, including the prorating of office expenses such as office rent, salaries, stamps, etc., to each case. Also, it appears that the 1961 report reflected that some of plaintiff's fee for the 1961 speech was not paid until 1962, and the Secretary of Labor demands a full report of all receipts by the plaintiff from all Labor Law practice for the year 1962 and the report to include any and all disbursements from such fees, including a proration of office expenses to each case.

The plaintiff refused to report other than the receipts and disbursements relating to the three speeches, and has reported nothing with regard to his general Labor Law practice involving the giving of advice to employers, representing employers in court or before administrative agencies, services in collective bargaining, negotiating agreements and the like. Plaintiff claims that the hereinbefore mentioned services, other

than the three speeches, are exempt from the reporting requirement by the express terms of 29 U.S.C. § 433(c).

The Secretary of Labor takes the position that a proper interpretation of the 29 U.S.C. § 433(c), when read in conjunction with 29 U.S.C. § 433(b), is that when a person engages in activities covered by 29 U.S.C. § 433(b), that a full annual disclosure of receipts and disbursements is required with regard to all Labor Law practice of such person, and that the terms of 29 U.S.C. § 433(c) does not exempt such person.

Both parties urge that the subject statutes have a clear meaning, each party contending that there is little, if any, ambiguity. However, the court deems that there is an ambiguity. Statutes are open to construction, not as a matter of course, but only where the language used requires interpretation. It is only where the language used will bear two or more constructions or is of such doubtful or obscure meaning that "reasonable minds might be uncertain or disagree as to the meaning" that construction must be given by the court. 50 Am. Jur., Statutes, § 225, *Osaka Shosen Kaisha Line* v. United States of America, 300 U.S. 98, 57 S. Ct. 356, 81 L. Ed. 532 (1937).

The provisions of 29 U.S.C. § 433 (b) when read in conjunction with the provision of 29 U.S.C. § 433(c) leaves, in the opinion of the court, some doubt as to what was intended. § 433(b) states that annually a report must be filed showing "receipts of any kind from employers on account of labor relations advice or services . . ." § 433(c), immediately following, states that "nothing in this section shall be construed to require . . . any person to file a report convering services by reason of his giving or agreeing to give advice . . .

to such employer . . . or representing such employer before any court . . ."

All rules for the interpretation or statutes have for their sole object the discovery of legislative intent. In *Brotherhood of Local Firemen and Enginemen* v. *Northern Pacific Railway Co.*, 8 Cir., 274 F 2d 641 (1960), the Court said:

> "Courts should, if possible, heed the intention and purpose of Congress in enacting legislation. They should avoid giving a statute any other construction than that which its words demand."

The record in this action is not conclusive as to the legislative intent relative to the question raised by this action. However, considering the record as a whole, the legislative history of the Labor-Management Reporting and Disclosure Act of 1959 and the apparent abuses in the labor-management field intended to be corrected, the court is of the opinion that Congress intended in the enactment of § 433 (c) to exempt and not require a report of any kind by a person with regard to work and services performed of the nature set out in § 433 (c) even though in a given year such person during such year performed "activities" set out in § 433 (b).

Congress, in enacting the legislation, was obviously striking at the undercover deals purportedly taking place at the time in the Labor-Management field. The thirty day report required by § 433 (b) gives some information therein that might be helpful in pinpointing and eliminating such shadowy practices, but it is not reasonable to believe that the mere reporting of fees and expenditures from other clients where there were no § 433 (b) reportable activities performed for such clients would serve any real purpose. There is apparently no contention that the services listed in § 433 (c) are

other than services which reputable labor consultants render so no value could come from a report and such above board services would not likely have been of concern to Congress. A statute is presumed not to have been intended to produce unreasonable consequences but to have the most reasonable operation that its provisions allow.

The defendant contends the statute is remedial and should be liberally construed while the plaintiff insists that it is penal in nature and should be strictly construed. The penal provision of the statute, 29 U.S.C. § 439, is as follows:

> (a) Any person who willfully violates this subchapter shall be fined not more than $10,000 or imprisoned for not more than one year, or both.
>
> (b) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any document, report or other information required under the provisions of this subchapter shall be fined not more than $10,000 or imprisoned for not more than one year, or both.
>
> (c) Any person who willfully makes a false entry in or willfully conceals, withholds, or destroys any books, records, reports or statements required to be kept by any provision of this subchapter shall be fined not more than $10,000 or imprisoned for not more than one year, or both.
>
> (d) Each individual required to sign reports under section 431 and 433 of this title shall be personally responsible for the filing of such reports and for any statement contained therein which he knows to be false. Pub. L. 86-257, Title II, § 209, Sept. 14, 1959, 73 Stat. 529.

Thus it is made a crime punishable by fine or imprison-

ment or both to violate the terms of the law, and it is nonetheless so whether 29 U.S.C. § 401 et seq., be termed remedial in nature or penal. Statutes creating crimes are to be strictly construed in order that such statutes not include that which is not plainly embraced within the language of the statute. *United States* v. *Resnick*, 299 U.S. 207, 57 S. Ct. 126, 81 L. Ed. 127 (1936); *Kordel v. U. S. of America*, 335 U.S. 345, 69 S. Ct. 106, 93 L. Ed. 52 (1948). The court is not of the opinion that a strict interpretation must be adopted in order to support its conclusion in this case.

The court recognizes that this is not a criminal action but on the other hand must accept the fact that a violation of the statute is made a crime by its terms. There cannot be one construction when a civil remedy for enforcement is employed and another when the criminal procedure is involved. *Federal Communications Commission* v. *American Broadcasting Co.*, 347 U.S. 284, 74 S. Ct. 593, 98 L. Ed. 699 (1954).

The general rule concerning statutory construction is to the effect that the letter of the statute as written must not be unreasonably violated. 29 U.S.C. § 433(b) sets out that a thirty day report must be made when, pursuant to an agreement a person undertakes activities, in brief, leading to (1) persuasion of employees, or (2) supplying information. The statute then provides that "Every *such person* (underscoring added) shall file annually . . . as a result of *such an agreement* (underscoring added) a report . . . containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services . . ."

It is obvious at this point that the literal wording of the statute is that a person who receives payment for persuasion or information activity in a given year must report other labor law income for the year.

But immediately following 29 U.S.C. § 433(b) is 29 U.S.C. § 433(c) providing that:

(c) "Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving . . . advice to such employer or representing . . . such employer before any court . . . or engaging . . . in collective bargaining . . ."

The terms of § 433(c) are explicit in the respect that it is provided that "*Nothing in this section shall be construed to require*" a report covering service set out therein.

The defendant contends that the thirty day report required by § 433(b) covers the arrangement for services; that the annual report covers *receipts and disbursements* and has nothing to do with *services*; that § 433(c) says no report is needed on *services* but does not say that no report is needed on receipts and *disbursements*. The court is of the opinion that a report setting out fees paid for services would constitute a *report covering services*.

The question arises as to what constitutes "persuasion". Would the mere appearance of the employer's attorney at the request of the employees to answer questions constitute "persuasion?" Would the conveyance of information to an employer as to the number of employers trucks passed a given corner during a noon hour constitute supplying "information?" To construe the statutes as requested by the defendant would work a needless and, the court believes, an unintended restriction on a legitimate profession, requiring meticulous accounting and disclosure of professional relationships not necessary or essential in relieving the abuses at which the legislation struck. It is to be presumed, in construing a statute, that an injustice was not intended to result.

The defendant takes the position that the activities set

out in § 433 (b) are in an area in which responsible labor consultants or persons will not become involved, and hence § 433 (c) only exempts those persons not performing any activities described in § 433 (b). It is not presumed by the court that all of the activities covered by § 433 (b) are such as would not be performed by a responsible labor consultant or other person. As stated herein "information" and "persuasion" are terms susceptible of a broad interpretation.

§ 433 (b) provides that the thirty day report shall contain a detailed statement of the agreement entered into regarding the performance of the activities described. This section does not provide for any further report until the annual report relative to receipts and disbursements. The Court construes that the annual report regarding receipts and disbursements was intended to effect and be a supplementary report regarding activities covered in the thirty day report, that is, show what money came in by reason of the arrangement and where the money went. This construction of § 433 (b) harmonizes with the terms of § 433 (c) and adopts what appears to the Court to be the clear sense of the words of § 433 (c) that no report, thirty day or annual, is required with reference to regular open and recognized labor law practice of the nature described in § 433 (c). To construe the provisions of § 433 (c) to the effect, as contended by the defendant, that persons who engage in § 433 (b) activities must even so report all receipts from all labor services and show all disbursements therefrom, including pro-rating of office expenses to each case would in the opinion of the Court, necessitate reading into § 433 (c) words not there and which with very minor changes could have been inserted, if intended.

The plaintiff's motion for summary judgment is allowed, and the defendant's motion for summary judgment is denied. Judgment will be entered accordingly.

APPENDIX C

JUDGMENT OF UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 9870

R. D. Douglas, Jr.,

Appellee,

vs.

W. Willard Wirtz, Secretary of Labor of the United States Department of Labor,

Appellant.

Appeal from the United States District Court for the Middle District of North Carolina.

This cause came on to be heard on the record from the United States District Court for the Middle District of North Carolina, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby vacated; and that this cause be, and the same is hereby, remanded to the United States District Court for the Middle District of North Carolina, at Greensboro, with directions to enter a judgment consistent with the views expressed in the opinion of the Court filed herein.

October 8th, 1965.

(Signed) ALBERT V. BRYAN
United States Circuit Judge.

OPINION OF JUSTICE BRYAN
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 9870.

R. D. Douglas, Jr.,

Appellee,

versus

W. Willard Wirtz, Secretary of Labor
of the United States Department of Labor,

Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, AT GREENSBORO. EUGENE A. GORDON, DISTRICT JUDGE.

(Argued May 5, 1965. Decided October 8, 1965.)

Before BRYAN AND BELL, Circuit Judges and LEWIS, District Judge.

ALBERT V. BRYAN, Circuit Judge:

The Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, particularly in §§ 203 (b) and (c), 29 U.S.C. 401, 433 (b) and (c), was construed by the District Court at the suit of R. D. Douglas, Jr., an attorney at law, contrary to the administrative interpreation of the Secretary of Labor, who now appeals.

The substance of these sections of the law, and their present relevancy, are stated in the point pressed here by the Secretary. It is this: that since, concededly, a lawyer accepting retainment by an employer "to persuade employees to exercise, or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively", is required by § 203 (b) (1) to report these activities annually to the Secretary, the lawyer is also required by further provisions of that section to include in such report, not only his receipts and disbursements in connection with those particular undertakings, but as well all his receipts (with related disbursements) in the same year for advice or services in respect to labor relations, even though the advice or services were not within the sphere of the statutory persuasions:

The District Court, in sustaining the argument of Douglas, held that § 203 (c) exempts the lawyer from reporting any receipt or expenditure in connection with labor relations advice or services not incident to the employee-persuasion effort of § (b) (1). The terms of the Act and its legislative history, we believe, compel a contrary interpretation.

The sections just cited, §§ 203 (b) and (c), are controlling here and provide:

"(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly—

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

"(c) Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder."

Plaintiff-appellee, an attorney in good standing, raised the present issue in an action for a judgment declaratory of his obligations under the Act. In 1960 and 1961 he undertook persuasion services within the meaning of § 203 (b) (1) and filed the required 30-day report. However, he refused in the annual report to note any of his receipts and expenses "on account of labor relations advice or service", or the sources thereof, which were not related to the persuasion outlined in § (b) (1). For some reportable activities under § (b) (1) in 1960 and 1961, final payment was not received from the employers until 1962 and no formal annual report was filed for the year 1962.

Section (b), it will be noted, prescribes two reports. One must be filed within 30 days after the agreement or arrangement for the persuasion activity has been consummated. It is confined to each undertaking for that purpose. Another and far more comprehensive report is required annually. It is this report, as already indicated, with which this case is concerned.

The annual report must designate the source and amount of "receipts of any kind from employers on account of labor

relations advice or services", § (b) (A). Highly relevant is the reference to "advice". It is not mentioned in § (b) (1) —the persuasion clause—so that, the Secretary stresses, this reference contemplates the inclusion of advice which is beyond the scope of the persuasion of § (b) (1). Thus, the language literally requires a report of payments for other advice, unless the requirement of the annual report is narrowed by § (c). But we find no clause in § (c) explicitly delineating the advice which it excepts. Quite baldly it excludes the reporting of services comprising advice, representation and negotiation.

Thus it appears that "advice" is required to be reported by § (b) (A), but is exempted by § (c). A reasonable reconciliation of the conflict, we hold, is to compel the reporting of all income and expenditures, in connection with labor relations advice and services, given or rendered aside from the persuasion activities, if the attorney has within the same reporting period also either acted or received payment as a persuader under § (b) (1). Consistently, he would not be required to report fees and expenses for independent advice if there has been neither a persuasion service performed nor payment for a previous service it received in that year.

This is the necessary conclusion from the wording of §§ (b) (A) and (c). Unless "advice" in the former embraces independent advice, it has no meaning whatsoever. This result in itself would suggest misconstruction of the provision. As the word appears in § (c), it plainly refers to advice apart from the statutory persuasion. Indeed, this is the contention of the lawyer-appellee. The exemption in § (c) is an excusal of any filing whatsoever "by reason of . . . giving or agreeing to give advice". In our judgment the quoted phrase is to be understood to declare that advice in itself and alone does not create an obligation to report. But the two sections

together declare that when persuasion services or receipts therefor and independent advice occur in the same fiscal year, all of them must be reported.

This reading is sustained by the legislative history of the Act. Throughout debate on the legislation, the point was noted that the requirement of § (b) encompassed not only an annual report of receipts from persuasion activities but all receipts "on account of labor relations advice". S. 3974, 85th Cong., 2nd Sess. (1958) (Kennedy-Ives Bill); S. 1555, 86th Cong., 1st Sess. § 103(b) (1959) (Kennedy-Ervin Bill); Sen. Rep. No. 187, 86th Cong., 1st Sess. on S. 1555, at 12 (1959). It was tagged the "shotgun" clause because of the breadth of its pattern. Cong. Rec. 85th Cong., 2nd Sess., 17139, Aug. 12, 1958.

The Senate bill passed that body carrying the assailed clause. The House bill as adopted limited the reports to the agreements or arrangement now substantially embraced in §§ (b) (1) and (2), that is to reports only of persuasion undertakings and the supplying of an employer with information concerning his employees' labor activities. H. R. 8342, 86th Cong., 1st Sess. § 203(b) (1959); H. Rep. No. 741, 86th Cong., 1st Sess. 35, 36 (1959). The Conference Committee adopted the Senate provision. H. Conference Rep. No. 1147 on S. 1555, 86th Cong., 1st Sess. 32, 33 (1959).

Our acceptation of the Congressional language is confirmed by these two statements of the Senate Committee during the preceding term and in the term of passage of the legislation:

"Section 103(b) requires a labor-relations consultant to file a financial report upon his labor-relations activities if he undertakes to influence or affect employees in the exercise of the rights guaranteed by the National

Labor Relations Act or to provide an employer with paid informers or any agency engaged in the business of violating such rights. Since attorneys at law and other responsible labor-relations advisors do not themselves engage in influencing or affecting employees in the exercise of their rights under the National Labor Relations Act, an attorney or other consultant *who confined himself* to giving advice, taking part in collectively bargaining and appearing in court and administrative proceedings nor [sic] would such a consultant be required to report. Although this would be the meaning of the language of sections (103 (a) and (b) in any event, a proviso to section 103 (b) guards against misconstruction." Sen. Rept. No. 1684, 85th Cong., 2d Sess., 8-9 (1958). (Accent added.)

* * *

"... An attorney or consultant who *confines himself* to giving legal advice, taking part in collective bargaining and appearing in court or administrative proceedings would not be included among those required to file reports under this subsection [§ (b)]. Specific exemption for persons giving this type of advice is contained in subsection (c) of section 103." Sen. Rept. No. 187, 86th Cong., 1st Sess., 12 (1959). (Accent added.)

With this intendment of the Act manifested both in its phraseology and by the Congressional commentaries, we have no occasion to explore the need for or comment upon the wisdom of the legislation.

Our view—that a lawyer is obligated to reveal receipts, expenditures and the names of his clients in connection with other labor relations advice or services, if he participates in the practices categorized in § (b) (1)—does no injustice to the lawyer. Primarily, as the legislative history records, the requirement is directed to labor consultants. Their work is

not necessarily a lawyer's. Indeed, for a legal adviser it would be extracurricular. True, a client may desire such extra-professional services, but, if so, the attorney must balance the benefits with the obligations incident to the undertaking. Of course, one unforseeable burden may be the subsequent necessity of listing clients who, prior to the persuasion services, were given non-reportable advice without any thought that a later activity would force a report of their names. Here, however, it is well to remember that, save in unusual circumstances, the name of a client is not shielded by the attorney-client privilege. Cf. N.L.R.B. v. Harvey, F.2d , decided by this court on July , 1965, with opinion by Butzner, D.J. Of course, the content of the communications between the lawyer and the client, even on the subject of labor relations, is not to be included in the report under § (b). § 204, 29 U.S.C. 434. Appellee does not invoke the section just cited to uphold his primary contention.

Naturally, the conscientious lawyer may be troubled in the determination of whether or not a particular service comes within the statutory prescription "to persuade employees to exercise or not to exercise" their rights. But this is not an uncommon problem. It is faced in many situations in which reports are required by law, e.g. whether receipts are reportable as taxable income. Frankness in the report must be met by fairness in interpretation by the Secretary. Border-line instances, doubtlessly, may be submitted with a statement of why in the lawyer's judgment the services were not of the persuasive character envisioned by the statute.

The judgment of the District Court will be vacated with directions to enter an order consistent with the views herein expressed.

Vacated and Remanded.

Judge Lewis dissents.